DEPARTMENT OF THE ATTORNEY GENERAL STATE OF HAWAII



REQUEST FOR PROPOSALS RFP NO. ATG-CPJA-05-IS-01

TO PROVIDE A REQUIREMENTS DEFINITION FOR THE HAWAII JUVENILE JUSTICE INFORMATION SYSTEM

August 9, 2004

Issued By:

CRIME PREVENTION & JUSTICE ASSISTANCE DIVISION JUVENILE JUSTICE INFORMATION SYSTEM BRANCH

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NOTICE TO OFFERORS

(Chapter 103D, HRS)

The Department of the Attorney General seeks qualified offerors to provide a Requirements Definition for the Hawaii Juvenile Justice Information System.

Sealed proposals for this project:

ATG-CPJA-05-IS-01 PROVIDE A REQUIREMENTS DEFINITION FOR THE HAWAII JUVENILE JUSTICE INFORMATION SYSTEM

will be received at:

Department of the Attorney General Crime Prevention & Justice Assistance Division Juvenile Justice Information System 235 Beretania Street, Suite 401 Honolulu, Hawaii 96813

Proposals will be accepted up to 4:30 p.m. H.S.T., **October 25, 2004**. Proposals received after this date will not be accepted. The Request for Proposals ("RFP") may be examined at or obtained from the office listed above. The RFP is also available on-line at http://www2.state.hi.us/bidapps/.

Offerors are required to attend a pre-proposal conference on September 7, 2004.

For further information, call Ms. Eileen Madigan at (808) 586-1095.

Mark J. Bennett
Attorney General

Honolulu Star-Bulletin August 8, 2004

RFP: ATG-CPJA-05-IS-01 Notice to Offerors

I. OVERVIEW

A. OBJECTIVES OF THE PROCUREMENT

The State of Hawaii, Department of the Attorney General ("STATE") seeks proposals from highly qualified technology consulting firms to provide a requirements definition and implementation alternatives for the "next generation" Hawaii Juvenile Justice Information System ("JJIS"). The JJIS is a legacy system used by all juvenile justice agencies in Hawaii and is overdue for a technology upgrade. Assessment of the needs of current and potential JJIS users as well as the needs of the JJIS administrative and technical staff is a requirement of this project.

The first objective is to define a new development environment for the JJIS technical staff. It must be upgraded to improve the ability to deliver services as defined by the user community in a timely and responsive manner. The proposed development environment must consider the standards of the host agency and the State's commitment to consider nonproprietary technologies, open standards, and industry best practices. A cost-justified recommendation for the technical environments of both the JJIS technical staff and the host agency is a required deliverable in the contract resulting from this procurement. It must include an evaluation of remaining at the current production hosting site and consider other viable hosting options. The recommendation must compare various solutions and specifically show how the recommended solution is advantageous for the STATE.

A second objective is to build the foundation of the next generation JJIS by investigating and defining the needs of the JJIS users. Offerors shall, through interviews with users and technical staff, collect and define the requirements of the next generation JJIS. A report that documents the requirements shall be a deliverable of the contract resulting from this procurement.

B. BACKGROUND

The JJIS is an <u>existing</u> information system that combines juvenile offender information statewide in Hawaii from the police, prosecutors, Family Court, and Hawaii Youth Correctional Facility. This information is used by JJIS agencies to track juvenile offenders. The JJIS is also Hawaii's statewide repository for information on missing children. Responsibility for the JJIS lies with the Department of the Attorney General as mandated by Chapter 846D, Hawaii Revised Statutes.

Information in the JJIS includes juveniles' first exposure to the justice system and extends through prosecution, adjudication, and incarceration. With this comprehensive information, agencies can make informed decisions that balance community safety with the objective of

RFP: ATG-CPJA-05-IS-01 August 9, 2004 Overview 2 of 74 restoring as many juveniles as possible to productive citizenship and can track juveniles through the justice system.

The JJIS is used by police officers, probation officers, judges, prosecutors, and correctional workers who need to know the status of individual juveniles at any time or any point in the juvenile justice process. The JJIS provides background information on arrest and court data, personal data, social services provided, as well as identifying juveniles who are suicide risks, affiliated with a gang, or involved with drugs.

In addition to the tracking capabilities of the database, the JJIS was developed with the idea that this information would enable juvenile justice agency staff to determine the best programs and treatment to use for juvenile offenders. While the juvenile database can provide the data to assess the usefulness of treatment alternatives, it could also be used to determine resource needs, measure the effectiveness of programs, and assist in developing policy recommendations. Data analysis is vital in order to determine the effectiveness of the JJIS as well as programs and processes used to address juvenile needs.

The success of the JJIS has been due in part to the Juvenile Justice Information Committee (JJIC) whose members are the heads of the juvenile justice agencies. The JJIC is defined in statute with the mandate to "promote interagency cooperation and coordination in the development and management of an accurate, complete, timely, and fully integrated statewide juvenile justice information reporting and retrieval system".

History of JJIS Development

In October 1988, "Juvenile Justice Information System External Specifications" was published. The document presented the conceptual design of the JJIS and identified the basic design approach. It specified a database residing on a mainframe with user access via terminal (either connected or running emulation).

Development of the JJIS software proceeded internally, using a Computer Aided Software Engineering (CASE) tool that runs under the OS/2 operating system. Because the juvenile justice agencies have case management systems that run on a wide variety of platforms, it was necessary to procure middleware to perform translation and to ensure delivery of records. The middleware that was selected was AAI, a product from MicroFocus.

A phased implementation of the system began in 1997 when the first two agencies began using the JJIS. JJIS was installed on the City & County of Honolulu's mainframe in a MVS/CICS/DB2 environment. The current versions as of July 2004 are:

CICS/ESA: v4.1 MVS OS390: v2.10 DB2: v5.1

The mainframe is currently an IBM 7060 CMOS R42.

In 2001, with the final agencies close to implementation in the JJIS, it was apparent that a plan to upgrade the JJIS technology should be developed. At that time, the Department of the Attorney General contacted SEARCH for technical assistance.

SEARCH, The National Consortium for Justice Information and Statistics, is a nonprofit membership organization created by and for the States, and is dedicated to improving the criminal justice system and the quality of justice through better information management, the effective application of information and identification technology, and responsible law and policy.

SEARCH made the following recommendations in its final Technical Assistance report:

• Research New Technologies for Future Juvenile Justice Information System

JJIS is part of a larger community, both within the justice community and state agencies, using common technological resources. It is no longer advisable to build systems or advance systems without concerning oneself with the business partners with whom you will be interfacing. However, the very recent technology advancements and industry standards have made integration at the technical level much simpler and much more powerful. With the advent of eXtensible Markup Language (XML) as a standard mechanism for defining and transferring information between disparate systems over TCP/IP, the need for proprietary middleware has all but vanished. So has the need for common operating systems and databases to make data sharing feasible. With XML as the information defining and transport mechanism, the only compelling reason for similar systems is the sharing of resources, both person and machine, if they are housed in a common area.

In addition to XML's ability to predefine data — develop data definitions and constraints that are known between systems — there are also emerging standards, which use XML but allow the sending system to invoke processes or methods on the receiving system (SOAP, XMLRPC, EBXML). These can be predefined processes or ones unique to the receiving system. The major hardware and software vendors such as IBM, Microsoft, Oracle and Sun are embracing these standards. The justice community nationally is also moving toward the adoption of standardized uses of XML in defining such things as Rap Sheets or groups of data such as first name, middle, last, etc. These efforts are gaining momentum throughout the justice community, and are being defined through volunteers from state and local government as well as the vendor community.

• Develop Technology Migration Strategy

The technical effort the JJIS staff has put forth over the last ten years is to be commended. However, the tools used by JJIS are maturing and although they will hold the status quo adequately, they will pose an obstacle if JJIS is to take on a more sophisticated role in the justice system. The critical aspect of any architectural or technological change is a strong understanding of the business goals driving the need for the change. This is where JJIS should be especially aware of the needs and directions of its business partners in the juvenile justice community.

It is recommended JJIS develop a migration strategy to take advantage of what has been developed, and to take advantage of the radical improvement in business-to-business technology that has emerged over the last five years. Even though the current JJIS architecture is not true three-tier architecture — database, server applications, client applications (usually screen handling) — it can be viewed as such logically. JJIS has the DB2 database, the Universal Transaction and the front-end applications, which primarily deal with screen handling and editing. A migration strategy can position JJIS to take advantage of what has been achieved and be responsive to the increasing demands from the other justice agencies.

The database and the Universal Transaction software can be maintained for the near future. However, the AAI and the front-end applications do lend themselves to more near-term replacement. JJIS should seriously examine the use of XML as a replacement for AAI. This could be instituted without a great deal of new software acquisition. XML is open source and is supported through the industry standards setting body W3C. As for the front-end applications, there are two strategies and one could follow the other. The state and counties are moving to Web-based applications. IBM's Web-Sphere product is an option for immediately converting green screen displays to browser-friendly output. Apparently, other state agencies are also exploring Web-Sphere as an option. This should be considered a short-term solution, as it does not address the current constraints of the COBOL/COOL development environment.

With the use of XML, there is less need to write programs that validate user data. XML can impose constraints such as value range and data type on the information prior to its being sent on to the application. Therefore, over time JJIS could then replace the Universal Transaction with the new environment as well. Any new applications, if pertaining to a broker role, could be developed in the new environment.

Following these recommendations, the Department of the Attorney General is now seeking proposals to provide a requirements definition for the JJIS.

C. AUTHORITY

This RFP is issued pursuant to the provisions of the Hawaii Revised Statutes, chapters 103 and 103D. All prospective contractors are charged with presumptive knowledge of all

RFP: ATG-CPJA-05-IS-01 August 9, 2004 Overview 5 of 74 requirements of the cited authorities. Submission of a valid executed proposal by any prospective contractor shall constitute knowledge on the part of such prospective contractor.

D. RFP ORGANIZATION

This RFP is organized into five (5) sections:

Section I, Overview – provides offerors with general information on the objectives of this RFP, procurement schedule, and procurement overview.

Section II, Scope of Services – provides offerors with a general description of the tasks to be performed, delineates STATE and contractor responsibilities, and defines the contract period and deliverables.

Section III, Proposal – describes the required format and content of the proposal.

Section IV, Evaluation Criteria – describes how proposals will be evaluated by the STATE, what criteria are deemed mandatory, and what criteria are used to establish priority.

Section V, Draft State of Hawaii Agreement for Goods or Services Based Upon Competitive Sealed Proposals provides offerors the terms and conditions under which the work will be performed.

E. ISSUING OFFICE AND CONTACT PERSON

This RFP is issued by the State of Hawaii, Department of the Attorney General. The individual listed below is the sole point of contact from the date of release of this RFP until the selection of the winning contractor. Questions will be accepted only if submitted in writing and received on or before the day specified in subsection **F** below.

Ms. Eileen Madigan

JJIS Coordinator

Department of the Attorney General

Crime Prevention & Justice Assistance Division

Juvenile Justice Information System

235 Beretania Street, Suite 401

Honolulu, Hawaii 96813

Telephone: (808) 586-1095 Fax: (808) 586-1097

Email: eileen.madigan@hawaii.gov

F. PROCUREMENT TIMETABLE

1.	RFP Announced in the Star Bulletin	August 8, 2004	
2.	RFP Available for Pickup	August 9, 2004	
3.	Letter of Intent to Submit Proposal	August 31, 2004	
4.	Pre-proposal Conference	September 7, 2004	
5.	Closing Date for Submission of Written Questions	September 14, 2004	
6.	State Response to Written Questions	September 28, 2004	
7.	Closing Date for Receipt of Proposals	October 25, 2004	
8.	Interviews with Priority Listed Offerors & Proposal Review Period	Nov 15 - 19, 2004	
9.	Closing Date for Receipt of Best and Final Offers	December 1, 2004	
10. Contractor Selection and Award			
10. Estimated Contract Start Date			

G. PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be held as shown in the Procurement Timetable, from 9:00 a.m. to 12:00 noon, H.S.T., in the 15th Floor Conference Room of Leiopapa A Kamehameha, 235 Beretania St., Honolulu, Hawaii 96813. Offerors are required to attend this conference but attending via a conference call is allowed. Details of participation via conference call will be sent to everyone who submits a letter of intent.

Offerors are encouraged to submit written questions prior to the conference. However, impromptu questions will be permitted and spontaneous answers may be provided at the conference at the State's discretion. Written questions submitted prior to the conference will be addressed at the conference first. The identities of those offerors who submitted these questions will be kept confidential. Verbal answers provided at the pre-proposal conference are only intended as general direction and will not represent the agency's official position. Any formal official responses will be provided in writing to all offerors attending the pre-proposal conference. Any further questions following the close of the pre-proposal conference, must be submitted in writing no later than the deadline for written questions listed in the Procurement Timetable, in order to generate an official response.

H. LETTER OF INTENT

Proposals will not be accepted without a timely letter of intent. A non-binding letter of intent to submit a proposal in response to this RFP must be received by the contact person by the deadline for letters of intent listed in the Procurement Timetable. Offerors who have submitted a letter of intent will receive the official STATE responses to all of the offerors' questions and other communications as the STATE deems appropriate.

I. SUBMISSION OF QUESTIONS

Offerors may submit questions in writing to the contact person. No telephone calls will be accepted. The deadline for submitting written questions is as listed in the Procurement Timetable for written questions. All written questions will receive an official written response from the STATE. STATE responses to offerors questions will be sent by the date listed in the Procurement Timetable to all offerors submitting letters of intent.

J. SUBMISSION OF PROPOSALS

Each qualified offeror may submit only one (1) proposal. The format and contents of the proposal are specified in Sections II and III.

One (1) original and five (5) copies of the proposal, and one electronic copy in PDF format on CD must be submitted and received by the issuing office by 4:30 p.m., H.S.T., on the closing date for receipt of proposals as shown in the Procurement Timetable. Any proposal received after this date and time will be rejected. Proposals should be mailed or delivered to:

Ms. Eileen Madigan

JJIS Coordinator

Department of the Attorney General

Crime Prevention & Justice Assistance Division

Juvenile Justice Information System

235 Beretania Street, Suite 401

Honolulu, Hawaii 96813

The outside cover of the package containing the proposal shall be marked:

State of Hawaii Department of the Attorney General Juvenile Justice Information System Proposal Submitted in Response to: JJIS Requirements Definition, ATG-CPJA-05-IS-01

K. DISCUSSIONS AND PRESENTATIONS

Discussions may be conducted with offerors who submit proposals determined to be reasonably likely to be selected for award. Such offerors may also be invited to make presentations to the STATE. However, the STATE may accept proposals without discussions and may make award without presentations by the offerors.

L. BEST AND FINAL OFFER

Best and final offers may be requested by the STATE. Any best and final offer must be received by the issuing office no later than as shown in the Procurement Timetable. If a best and final offer is not requested by the STATE, or if requested, is not submitted by an offeror, the previous submittal will be construed as the best and final offer. After best and final proposals are received, final evaluations will be conducted for an award. All proposals become the property of the State.

M. SELECTION AND EXECUTION OF CONTRACT

Award, if any, shall not be made on the basis of price alone, but shall be made to the responsible offeror whose proposal is the most advantageous to the STATE, taking into consideration the criteria set forth in the RFP.

If award is made the successful offeror will be required to enter into a formal written contract with the State.

This RFP, the offeror's accepted proposal, and the executed contract comprise the contract.

The funds available for this project are limited. The State reserves the right to contract for all or portions of the services being solicited depending on whatever action would be in the best interest of the State. No contract shall be binding upon the State until the contract has been fully and properly executed by all the parties thereto and the State Comptroller has endorsed thereon his certificate that there is an available unexpended appropriation or balance of appropriation over and above all outstanding contracts sufficient to cover the amount required by such contract. Further, the contract shall not be considered to be fully executed unless the State has approved the contract as to form.

Any work performed by the successful offeror prior to receipt of a fully executed copy of the contract shall be at the offeror's own risk and expense. The State and the JJIS are not and will not be liable for any work, contract costs, expenses, loss of profits or damages whatsoever incurred by the successful offeror prior to the receipt of a fully executed contract.

N. CERTIFICATES REQUIRED FOR EXECUTION OF CONTRACT

Before a contract can be executed with the top ranked offeror, the following certificates must be received:

- 1. Confidentiality Agreement See Attachment D
- 2. State & Federal Tax Clearance See Attachment E
- 3. Certificate of Compliance (Labor) See Attachment E
- 4. Certificate of Good Standing See Attachment E

Offerors are not required to have these certificates to submit a proposal, but the contract will not be executed until these requirements are met. Attachment D has a sample Confidentiality agreement that is used with all JJIS vendors. Attachment E – Tax Clearance & Certificates, has further details, phone numbers, and web addresses regarding the clearance certificates that will be needed by the winning offeror.

O. COSTS FOR PROPOSAL PREPARATION

Any costs incurred by offerors in preparing or submitting a proposal are the offeror's sole responsibility.

P. DISQUALIFICATION OF PROPOSALS

The State reserves the right to consider as acceptable only those proposals submitted in accordance with all the requirements set forth or referenced in this RFP and which demonstrate an understanding of the issues involved and the scope of services requested.

Any proposal offering terms and conditions contrary to those included in this RFP may be rejected without further consideration.

Grounds for disqualification and rejection include:

Proof of collusion among offerors, in which case all proposals involved in the collusive action will be rejected and any participant to such collusion will be barred from future bidding until reinstated as a qualified offeror.

Offeror's lack of responsibility and cooperation as shown by past work or services rendered.

Offeror's being in arrears on existing contracts with the State or having defaulted on previous contracts.

Delivery of the proposal after the deadline specified in the Procurement Timetable.

Offeror's failure to pay, or satisfactorily settle all bills overdue for labor and materials on former contracts with the State at the time of issuance of this RFP.

Proposal is unsigned.

Proposal does not comply with applicable laws; or contains provisions contrary to applicable law.

Proposal is conditional, incomplete, or irregular in such a way as to make the proposal incomplete, indefinite, or ambiguous as to its meaning.

Proposal has provisions reserving the right to accept or reject award, or to enter into a contract pursuant to an award, or provisions contrary to those required in the RFP.

Hand written proposals will be rejected.

Q. CANCELLATION OF RFP, REJECTION OF PROPOSALS

The RFP may be cancelled, but regardless of cancellation, any or all proposals may be rejected in whole or in part, when it is determined to be in the best interest of the State.

R. RFP AMENDMENTS

The State reserves the right to amend the RFP at any time. Amendments will be sent to all offerors submitting a letter of intent.

S. SPECIAL CONDITIONS

Special Conditions override the General Conditions of the Contract (Attachment F)

1. Subcontractors

If selected, the Offeror is fully responsible for all work performed under the contract. In the event of a proposal submitted jointly by more than one organization, one organization must be designated as the primary Contractor. All other participants shall be designated as subcontractors.

The Contractor may, with the approval of the State, after the signing of the contract enter into written subcontracts for performance of certain of its functions under the contract. Subcontracts must be approved in writing by the State prior to the effective date of any subcontract. Reasons must be presented in writing for any

subcontract to be awarded outside the State of Hawaii. No subcontract which the Contractor enters into with respect to performance of the contract shall in any way relieve the Contractor of any responsibility for performance of duties.

The Contractor shall give the State immediate notice by certified mail of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor which in the opinion of the Contractor may result in litigation related in any way to the contract with the State.

2. Laws Governing Entities Doing Business in the State

All Offerors, upon award of contract, shall comply with all laws governing entities doing business in the State, including chapters 237, 383, 386, 392, and 393 Hawaii Revised Statutes, and shall:

- 1. Be incorporated or organized under the laws of the State; or
- 2. Be registered to do business in the State as a separate branch or division that is capable of fully performing under the contract.

3. Contract Negotiations

In the event that the State needs to reduce the scope of work, or if there is only one qualified Offeror, or if the proposal exceeds available funds, the successful Offeror may be required to enter into negotiation sessions with the State prior to entering into a formal contract.

The State reserves the right to negotiate, with the selected Contractor, a mutually agreeable payment schedule.

4. Payment

Section 103-10, HRS provides that the State shall have thirty (30) calendar days after receipt of invoice or performance of services, to make payment. For this reason, the State may reject any proposal submitted with a condition requiring payment within a shorter period. Further, the State shall reject any proposal submitted with a condition requiring interest payments greater than that allowed by Section 103-10, HRS, as amended. The State may not recognize any requirement established by the Contractor and communicated to the State after award of the contract which required payment within a shorter period or interest payment not in conformance with statute.

5. Non-Appropriation of Funds

Execution of any agreement between the State and the Contractor is contingent upon the availability of funds. Non-availability of funds shall cause any agreement to become void and unenforceable and no damages shall accrue against the State as a result.

Depending on the prices in proposals received, the current level of funding may be insufficient to support the entire scope of the project. If the current level of funding is insufficient to support the entire scope of the project, the State reserves the right to select specific sections described in Scope of Services, for inclusion in the resulting contract. The resulting contract will be written to include only those sections that were selected by the State and may be written to be contingent upon further funding for the project. Evaluation of proposals shall be based on all sections whether the State selects all or less than all sections for the contract.

The State also reserves the right to select additional sections to be worked on by the Contractor at their accepted final prices as funds become available. The existing contract will then be amended to include the selected additional sections at their accepted final prices.

6. Liquidated Damages

For this contract, the amount for liquidated damages is zero.

7. Failure to Deliver

The Offeror shall deliver the services as awarded in this contract in accordance with terms and conditions herein. Failure to deliver may be cause for termination of the contract and the barring of the Offeror from future bidding. If the Offeror is unable or refuses to deliver the services within the time specified, it shall be the Offeror's responsibility to obtain prior approval to delay delivery for a specified delivery time. If the Offeror fails to request approval to delay delivery, the State reserves the right to terminate the contract and may bar the Offeror from future bidding.

8. Disputes

All disputes will be resolved in accordance with Section 103D-703, Hawaii Revised Statutes, and Chapter 126, Procurement Rules, as the same may be amended from time to time.

9. Insurance

The Contractor agrees to deliver to the State, along with the executed contracts document and before the commencement of work, two (2) copies of certificate of insurance evidencing proof of coverage for the following:

- 9.1 The Contractor shall, at its expense, maintain in effect at all times during the performance of work under the contract the following coverage and limits of insurance as minimum requirements and to be maintained with insurers and under forms satisfactory to the State.
 - 9.1.1 Worker's Compensation and Employer's Liability Insurance as required by the State of Hawaii including the U.S. Longshoreman's and Harbor Worker's Act coverage for all work subject to the Act.
 - 9.1.2 Combined Comprehensive General Liability Including Automobile -Bodily injury and Property damage ONE MILLION DOLLARS (\$1,000,000) each occurrence.
 - 9.1.3 Professional liability/errors and omission insurance with a minimum of ONE MILLION DOLLARS (\$1,000,000) per occurrence to include coverage for all errors and omissions which may result in financial loss to the State.
 - 9.1.4 Contractor shall identify the name of the company(ies) providing the insurance policy(ies) if known at the time of technical proposal submission.
 - 9.1.5 Contractor's Installation "All Risk" Insurance covering all work and all materials and equipment to be incorporated therein (including temporary facilities) while at the site of the project, or elsewhere while in storage and during inland transit, insuring to the value of the work as completed. The policy, or policies, of insurance shall include the State and its contractors on this project as insured as their respective interests may appear and shall include as insurer's waiver of subrogation rights in favor of the State and its contractors on this project, their officers and employees. Any policy or policies of insurance against loss or damage to his equipment and tools shall also include a provision therein providing for a waiver of the insurer's right to subrogation against the State and its contractors on this project, their officers and employees.
- 9.2 Special conditions applicable to above insurance policies are:
 - 9.2.1 Before commencement of work, the Contractor shall submit two (2) copies of the certificate of insurance to the State which must evidence on its face all required insurance and endorsements as

- stated and shall be signed by the insurer or its authorized agent. The Contractor agrees, upon written request, to furnish copies of such policies.
- 9.2.2 The State and its contractors on this project must be named as additional insured on all of the above policies, and policies shall contain a severability of interest clause.
- 9.2.3 All policies must provide that thirty (30) days prior written notice of cancellation or material change in coverage be given to certificate holders stated above.
- 9.2.4 Policies must provide that insurance is primary as respects the interest of the State on this project and that the State's own insurance is excess and not contributing insurance.
- 9.2.5 Policies must provide that such insurance subject to all of its terms and conditions, applies to the liability assumed by the Contractor under this contract.
- 9.2.6 Liability insurance including excess coverage shall include coverage for complete operations through the maintenance period of the work to which the contract applies.
- 9.3 Promptly upon execution of the contract and before commencement of any work, the Contractor shall also submit to the State the insurance and tax rates for:
 - 9.3.1 Worker's Compensation
 - 9.3.2 State Unemployment Insurance
 - 9.3.3 Federal Unemployment Insurance
 - 9.3.4 Social Security
- 9.4 Public Liability, including Personal Injury and Property Damage Liability
 - If the Contractor fails to maintain the insurance coverage as required by this section, the State may obtain such insurance coverage that is not being maintained, in form and amount substantially the same as set forth above, and the State may deduct the cost of such insurance from any amounts which may become due the Contractor under the contract.
- 9.5 If the Contractor shall procure or maintain any insurance upon any property in which the State has or may acquire an interest or upon which it has or may acquire a lien under this contract or otherwise, such policies shall, in the following language, make formal disclosure of the diversity of interests:

"Notice is hereby given and accepted that the State has or may acquire an interest in the subject matter of this insurance."

Such policy or policies shall also contain a loss payable clause reading as follows:

"Loss, if any, under this policy shall be adjusted with the named insured and be made payable to the State on order. Any payments thereunder shall inure to the benefit of the State to the extent of any loss suffered by the State; to the Contractor as any remaining balance."

Failure of the Contractor to provide and keep in force liability insurance policies as required shall be regarded as a material breach under the contract, entitling the State to exercise any or all the remedies provided in the contract for a breach by the Contractor.

Contractor shall maintain insurance acceptable to the State in full force and effect throughout the term of the contract.

Each insurance policy required by this RFP and the contract shall contain the following clauses:

- "This insurance shall not be canceled, limited in scope of coverage or nonrenewed until after 30 days written notice has been given to the State of Hawaii, Department of the Attorney General, Juvenile Justice Information System (JJIS), 235 Beretania Street, Room 401, Honolulu, Hawaii 96813."
- 2. "The State of Hawaii is added as an additional insured as respects operations performed for the State of Hawaii."
- 3. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

Each insurance policy shall be written by insurance companies licensed to do business in the State or meet Section 431:8-301, H.R.S., if utilizing an insurance company not licensed by the State of Hawaii.

The Contractor agrees to deposit with the State of Hawaii, on or before the effective date of the contract, certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this RFP have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the

State during the entire term of the contract. Upon request by the State, Contractor shall furnish a copy of the policy or policies.

Failure of the Contractor to provide and keep in force such insurance shall be regarded as material default under the contract, entitling the State to exercise any or all of the remedies provided in the contract for a default of the Contractor.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder or under the contract, or to fulfill the indemnification provisions and requirements of the contract.

Notwithstanding said policy or policies of insurance, Contractor shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this RFP and the resulting contract.

10. Tax Liability

Work to be performed under this contract is a business activity taxable under Chapter 237, Hawaii Revised Statutes (HRS), and Chapter 238, HRS, where applicable. Both out-of-state and Hawaii offerors are advised that the gross receipts derived from this solicitation are subject to the general excise tax imposed by Chapter 237, HRS, at the current rate of 4.166%, and where applicable to tangible property imported into the State of Hawaii for resale, subject to the applicable use tax imposed by Chapter 238, HRS. If applicable, the offeror shall state its tax-exempt status and cite the HRS chapter or section allowing the exemption.

If you have questions, refer to The State of Hawaii *Information on Hawaii State Taxes Administered by the State of Taxation*, Publication 1 (Revised 2002) is included herein by reference and available at http://www.state.hi.us/tax/pubs/pub1.pdf. Offerors will find additional information at the State of Hawaii, Department of Taxation's website: http://www.state.hi.us/tax/taxinfo.html

II. SCOPE OF SERVICES

A. OVERVIEW

The purpose of this RFP is to select a contractor who will improve the JJIS by making recommendations for improvements that will make it responsive to the current and future needs of the JJIS users. The current technology is outdated and all of the JJIS user needs and requests cannot be met in a timely manner. In many instances, they are not met at all. The JJIS is the first system of its kind to provide a data warehouse of statewide juvenile information from diverse agencies of the state and county. It is the goal of this RFP to continue and improve the JJIS by laying the foundation for the development of the "Next Generation" JJIS. The objective of this RFP is to define the JJIS user community requirements, the JJIS production application environment, and the JJIS technical development environment that will best meet the State's future juvenile justice needs. Without limiting or directing the offeror in its preparation of its proposal, it is anticipated that this effort may involve the review, assessment, and evaluation of the current JJIS, its employees and their abilities, budget constraints, and operations, in order to develop a map for the future success of the JJIS.

If a contractor is selected from this RFP to define the user and technical requirements, that contractor may be retained for the next phase(s) of the project, including the development of the detail design, installation of the technical development environment, training the JJIS staff on this new system, and development and implementation of the Next Generation in a statewide rollout. Retention, if any, for any subsequent phase would be at the discretion of the STATE and based on the success of the initial phase, budgetary and operational constraints, need, and other relevant factors. Any successful offeror must have the depth of skills needed to partner with the state and local agencies to define, design, and implement the system that meets the requirements of the JJIS.

While we are not requesting a full management audit of JJIS, the consultants should have some background in the substance of juvenile justice or justice in general and translate that understanding into feasible alternatives for us to consider. While recommendations may ultimately be technical in nature, the definitions and requirements on which they are based are driven by policies or administrative rules.

B. CONTRACT PERIOD

The term of this contract will depend on the agreement reached between the STATE and the winning offeror. The contract will begin with the Notice to Proceed and continue until the project deliverables are accepted by the STATE and all other requirements of the contract are met by the contractor. The actual dates for the term of the contract and the

deadlines for deliverables shall be specified in the contract. The STATE will withhold a portion of the compensation due to the contractor for payment adjustments until the termination date of the contract. The amount withheld will be negotiated with the offeror.

C. TASKS AND DELIVERABLES

It will be the offeror's responsibility to implement its proposal as accepted and approved by the STATE. The offeror must perform the following services and provide stated deliverables for this project.

- 1. Read and become thoroughly familiar with existing JJIS documentation prior to any agency meetings so that agency personnel are not merely providing answers readily available in these documents. The documents will be made available before the pre-proposal conference at www.hawaii.gov\jjis\ and include:
 - i. The current JJIS User Manual
 - ii. The JJIS Data Dictionary (available Jan 2005)
 - iii. The JJIS SES & SIS design documentation
 - iv. The 1974 State of Hawaii Juvenile Justice Plan
 - v. The 1983 Juvenile Justice System Study
 - vi. The 2003 SEARCH Group recommendations
- 2. Create a detail work plan for this project and ensure that it is executed as planned.
 - A Project Leader from the JJIS staff will be assigned to assist in the contact and coordination with JJIS user agencies in order to facilitate the successful completion of this project.
- 3. Submit bi-weekly status reports to the JJIS Project Leader, detailing any outstanding issues and any deviation from the project plan.
- 4. Interview the Hawaii JJIS community and determine the current and future needs of Hawaii's juvenile justice agencies with respect to the information technology for the "Next Generation" JJIS.
 - a) Determine the requirements of the JJIS users relating to the JJIS
 - b) Determine the requirements of the JJIS user management relating to the JJIS
 - c) Determine the requirements of the JJIS Administration
 - d) Determine the IT technical direction of the JJIS user agencies
 - e) Determine the most suitable database and platform for the "next generation" JJIS that satisfies the points a-d above

f) Determine the most suitable development environment for the "next generation" JJIS that satisfies the points a-d above

The offeror will be responsible to visit and interview all participating JJIS agencies and determine their juvenile justice information needs (both current and anticipated). JJIS has 15 participating agencies whose offices are spread across 4 islands (Hawaii, Kauai, Maui, and Oahu).

These Agencies are:

- 1. County of Hawaii
 - a. Hawaii County Police Department (HcPD)
 - i. Hilo
 - ii. Kona
 - b. Hawaii County Prosecuting Attorney (HcPA)
 - i. Hilo
 - ii. Kona
 - c. 3rd Circuit Family Court (FC3)
- 2. Kauai
 - a. Kauai Police Department (KPD)
 - b. Kauai Prosecuting Attorney (KPA)
 - c. 5th Circuit Family Court (FC5)
- 3. Maui
 - a. Maui Police Department (MPD)
 - b. Maui Prosecuting Attorney (MPA)
 - c. 2nd Circuit Family Court(FC2)
- 4. Oahu (City & County of Honolulu)
 - a. Honolulu Police Department (HPD)
 - b. Honolulu Prosecuting Attorney (HPA)
 - c. 1st Circuit Family Court (FC1)
 - d. Office of Youth Services (OYS)
 - e. Hawaii Youth Correctional Facility (HYCF)
 - f. Department of the Attorney General
 - i. JJIS Branch (AG/JJIS)
 - ii. Hawaii Criminal Justice Data Center (AG/HCJDC)
 - iii. Missing Child Center Hawaii
 - iv. Family Law Division (AG/FL)
 - v. Criminal Justice Division (AG/CJ)
 - vi. Crime Prevention Justice Assistance Research Analyst

The county of Hawaii is so large that visits to both major cities (Hilo and Kona) are required for this county's police and prosecutor.

Each county agency is supported by a separate IT Department and in some cases also has its own "in-house" IT support group. It is critical that both the user requirements and technical directions of these IT groups be taken into account in the "Next Generation" JJIS.

The JJIS currently resides on the mainframe at the City & County of Honolulu's Department of Information Technology (DIT). This is a principal player, not only because JJIS resides here, but because DIT has recently begun discussions about eliminating their mainframe.

Another principal technology player is the State's Information & Communication Services Division (ICSD). At the time the JJIS was implemented, ICSD was unable to provide the JJIS with 24x7 support needed by the police departments. Many individuals view ICSD as a logical place to house and support the JJIS.

The Judiciary has its own technology division, the Information Technology & Communications Division (ITCD). They are currently replacing a conglomerate of individual systems with an integrated product. The JJIS currently exchanges data with an older juvenile system (JUSTIS) and will need to continue this exchange as well as effectively interface with the new integrated product (JIMS).

- 5. The successful offeror will be familiar with the "Concepts for Operations for Integrated Justice Information Sharing" (as drafted by SEARCH) and will be required to explore the potential uses of JJIS information with other juvenile-serving agencies in Hawaii. This requires evaluating the business needs of JJIS information in agencies such as the Department of Human Services (Child Protective Services), the Department of Education, and the Department of Health.
- 6. Within one month of contract execution, the offeror must meet with the JJIC "new technology" subcommittee to assess their technology plans. This subcommittee is appointed by the JJIC which is the governing body of the JJIS and the "new technology" subcommittee team will be created to specifically address the technical aspects of the requirements document for the JJIS technology upgrade.
- 7. Within four months of contract execution, the offeror must deliver an initial draft of the user needs assessment based upon the visits and interviews the offeror has conducted.
- 8. Within two weeks of the initial draft of the user needs assessment, the offeror must meet with the JJIC "new technology" subcommittee to review the offeror's initial draft.

- 9. Within two months of the initial draft, the offeror must deliver and present the final needs assessment and recommendation document to the JJIC.
- 10. The final report that the offeror submits must contain detail cost analysis for all recommendations and alternatives with associated costs and benefits. It is insufficient to submit recommendations without including these costs and benefits of alternative strategies for their consideration. A final report that does not assess the appropriateness and cost/benefits using such mainstream products as IBM's WebSphere or Microsoft's .NET or "Open Source" alternatives would be considered deficient and will not be approved.

D. Issues the project must address:

Although not a complete list, the following will give prospective offerors a fair idea of complexity of issues for which the offeror must deliver recommendations.

Major User Issues:

- The Users' juvenile justice business requirements need re-assessment
- Users are given only rudimentary juvenile identification facilities in JJIS
- Users are not notified of information in JJIS that requires their attention
- Users have no information forwarded from other agencies
- Users can only view JJIS information as text
- Users must navigate across dozens of JJIS screens to get the full picture
- Users should be able to specify where reports are printed
- Users should be able to specify the content and format of reports
- Users have adopted the policy that it would be beneficial for JJIS to have positive ID for law violators

Where should the "next generation" JJIS be hosted:

- The City & County of Honolulu may eliminate their mainframe
- The City & County of Honolulu Mainframe DB2 version does not provide XML support
- The State's IT division (ICSD) is enhancing its 24x7 operational support
- Serious CICS/DB2 outages occur about once every month
- The JJIS staff cannot always be onsite to provide 24x7 support

Major Application Issues:

- Updates to juvenile data are slow (sometimes over 8 seconds)
- The JJIS needs to interface to a Geographic Information System (GIS)
- The JJIS should use XML and not an in-house developed exchange format
- Connection to agency applications with AAI takes months to setup

- Communicating Interface requirements and coordinating 3rd party vendors in order to set up an agency system interface to the JJIS takes 9-12 months
- Bad data sent to the JJIS repository suspends (stored without updating) and needs facilities to better integrate into a users daily workflow

Major Application Administrative Issues:

All the following issues stem from the fact that rudimentary system utilities are the only means to accomplish the following

- Security maintenance is cumbersome and takes two weeks to accomplish
- Translating agency codes and values into statewide values needs automated controls and better administrative facilities
- Auditing facilities are needed to monitor user inquiries and updates
- Control facilities are needed
- Security issues

Major Application Development Issues:

- New release of the JJIS software take over a year 4 months is desired
- Slow development means that many user requests are not accommodated
- Regression testing takes nearly a month to complete
- Homegrown automated testing facilities must be replaced
- The development environment COOL Enterprise/ADW must be replaced:
 - o It's no longer developed or sold by it's vendor
 - It runs under OS/2 an unsupported operating system
 - o Programming takes 3-4 times longer than industry standards
 - More than one person cannot work on the same program
 - Changes to the database must be replicated multiple times for each programmer
 - o It has no integrated testing facilities
 - It is not integrated with the host test/prod environment
 - o It does not support XML
 - Developers skilled in the JJIS development environment (ADW/COOL Enterprise) are almost non-existent
 - o There are few migration paths from this environment

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III. PROPOSAL

This section describes the contents and format of the proposal, and is intended to provide some measure of standardization to the extent possible, to facilitate comparisons among the different proposals. The proposal should be written in a clear, straightforward way, describing the offeror's capabilities and its solution to the requirements of the RFP. The proposal should be prepared without expensive artwork, unusual print, and materials that are not essential to the proposal's utility and clarity. By no means is this an attempt to limit the contents of any proposal, and an offeror may include any additional information that it deems to be pertinent, and would assist the State in reviewing the proposal.

Each responsive proposal will be reviewed by a five (5) member Evaluation Committee, for conformity with the requirements of the RFP. If asked for additional information by the Evaluation Committee, offerors shall respond within two (2) days, unless otherwise instructed by the Evaluation Committee.

A. CONFIDENTIAL INFORMATION

If the offeror believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld as confidential, then the JJIS Office should be so advised in writing. Price is not considered confidential and will not be withheld.

An offeror shall request in writing that designated trade secrets or other proprietary data be deemed confidential, and is therefore not to be disclosed. Such data shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. The State shall make a written determination in accordance with applicable law. If the request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices.

Offeror shall keep confidential all information to which it has access in the performance of the resultant contract executed pursuant to this RFP.

All proposals and other materials submitted by offerors shall become the property of the State and may be returned only at the State's option.

B. GUIDELINES AND OUTLINE

The required parts of the proposal packet are:

1. Proposal Transmittal Letter

The Proposal Transmittal Letter must be signed and included in each copy of the proposal packet(s). Form letter included in RFP.

2. Company Letterhead

Attach a blank original of the company letterhead.

3. Executive Summary

Condense and highlight the contents of the proposal to provide the Evaluation Committee with a broad understanding of the entire proposal.

4. Approach to the Project

Provide an overview of the project with the objective of demonstrating the Offeror's understanding of the RFP requirements. The section should contain a description of how the project will be carried out and why this approach was selected. Include anticipated problem areas, if any.

Provide point-by-point written confirmation for each of the ten (10) Tasks and Deliverables listed in Section IIC as to how the offeror's proposal meets the requirement.

5. Work Plan and Schedule

Provide a detailed task-by-task work plan for the entire project. Ample time should be allotted for approval of each deliverable. Offeror and State personnel should be listed separately.

Provide a chart, developing the project schedule and milestones.

Provide provisions for handling potential or actual problems.

Include assumptions or constraints identified by the offeror.

Also include details and method to be used in managing, controlling, and reporting project and project activities.

6. Project Organization and Staffing

This section provides a description of the minimum qualifications of personnel including technical support personnel that will be committed to the project. All personnel assigned to this project are required to sign and comply with all Federal and State security documents and requirements.

a. Project Personnel

The offeror shall assign personnel who meet the minimum qualifications set forth below to perform the services under, and for the duration of the contract. Resumes of personnel who will be assigned to this contract must be submitted with the proposal. All personnel for whom resumes are submitted must be employed by the offeror or its subcontractors as of the date of submission of the proposal.

The minimum qualifications of the personnel assigned to the contract are:

- 1. Project Manager, who is experienced in managing similar projects and has a minimum total of five (5) years experience.
- 2. Business Analyst: who is experienced in solutions to IT organizational problems and procedures, reporting requirements, system security and internal controls and has a minimum total of five (5) years experience.
- 3. Meeting Facilitator: an individual with a minimum total of three (3) years experience as a facilitator.

The personnel assigned to the project by the offeror shall not be employees of, nor have individual contractual relationships with the State. The offeror shall designate, prior to commencement of work under contract, a project leader for its personnel who will interface with the State's project manager.

The State shall have the right to request and the offeror must comply with the request of the removal of personnel immediately, upon notification, from the premises and from all work under the contract.

Demonstrate how the offeror's proposed Project team meets or exceeds the required qualifications. Include an organizational chart of the team, and detail functions, estimates of staff-hours, and responsibilities during the phases of the project.

Provide resumes of Project team staff members, including specific experience relevant to this RFP.

Include the anticipated roles of State personnel.

b. Criminal History Background Checks

All employees, agents, or representatives of an offeror or offeror's subcontractors who will be performing work on any phase of the contract arising out of this RFP are subject to a criminal history background check by the Department of the Attorney General. Such persons must provide to the Department of the Attorney General fingerprints and other required information to facilitate such a check, as well as the necessary fees to obtain such a check from the federal and state government, and no work on the contract shall be commenced by these persons until their background check is complete. At the completion of a background check, the Department of the Attorney General may, at its sole discretion, decide that a particular employee, agent, or representative of an offeror or an offeror's subcontractor shall not be involved in any work under the contract, and the offeror shall enforce that decision.

c. Other Disqualifying Circumstances

Each offeror must certify on company letterhead that neither it nor any of its proposed partners or subcontractors is currently under suspension or disbarment by any state or federal government agency, and that neither it, nor any of its proposed subcontractors are tax delinquent with the State of Hawaii. Offerors must also list all contracts with government or commercial customers that have been terminated for cause or default by any government or commercial customer during the five years preceding the submission of this proposal. The offeror must acknowledge that if it or any of its subcontractors subsequently are placed under suspension or disbarment by a state or federal government entity or if the offeror or any of its subcontractors subsequently become delinquent in Hawaii taxes, their proposal may be disqualified.

7. Offeror's Corporate Background and Experience

Background of the company, including date and place of incorporation and principle place of business; affiliates and subsidiaries; size and resources; and details of corporate experiences relevant to this project.

References, including customer name, contact name, phone number, tax number, and e-mail address.

8. Offer Form, OF-1 (Attachment C)

Each offeror must submit the Offer Form (Attachment C, OF-1) certifying the offeror is a Hawaii business incorporated or organized under the laws of the State of Hawaii; or is a Compliant Non-Hawaii business not incorporated or organized under the laws of the State of Hawaii, but registered at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii. For more information, please refer to Attachment E.

Offeror is requested to submit its offer using offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and to indicate exact legal name in the appropriate space on Offer Form, OF-1. Failure to do so may delay proper execution of the contract.

The authorized signature on the first page of the Offer Form shall be an original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the offeror's intent to be bound.

9. Cost

Offeror shall propose a total price for the entire project. The price will include all costs associated with the project. The costs shall include:

- a) The billing rates used for each of the offeror's staff.
- b) State General Excise Tax of 4.166%.
- c) Any other cost, as needed.

IV. EVALUATION CRITERIA

The award will be made to the responsive and responsible offeror whose proposal is determined to be the most advantageous to the State based on the evaluation criteria listed in this section.

- A. Mandatory Qualifications offerors must have the following qualifications and the state will eliminate from consideration any offerors which do not clearly establish their expertise in the following areas:
 - 1. Requirements Definition Experience
 - 2. Project Management Experience
 - 3. Application Development Experience
 - 4. Mainframe Experience
 - 5. Web Application & Web Services Experience
 - 6. Middleware Experience
 - 7. Experience with Development Methodologies
 - 8. A thorough understanding of the purpose and scope of the project
 - 9. An understanding of the deliverables the STATE expects and the required schedules
- B. Priority Criteria offerors will compete for this contract by establishing the superior expertise of their proposed team or company in the following areas:
 - 1. Similar Successful Projects completed by Proposed Staff
 - 2. Depth/Experience of Proposed Staff
 - 3. Offerors Financial Strength
 - 4. JIEM Experience & Certification
 - 5. Justice XML Experience
 - 6. Offerors planned presence in Hawaii during project
 - 7. Data Warehousing experience of Proposed Staff
 - 8. Price
 - 9. GIS experience of Proposed Staff
 - 10. Message Brokering Experience
 - 11. Security Experience of Proposed Staff
 - 12. Mobile Computing Experience of Proposed Staff
 - 13. Network Infrastructure Experience of Proposed Staff

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- C. Questions the Evaluation Committee will use in their evaluation of determining those offerors who will be considered for the Best and Final:
 - 1. Has the offeror clearly and concisely presented their planned project tasks that will determine the user and technical requirements? Are estimated start and end dates for each task provided? Is the project schedule appropriate and reasonable?
 - 2. Has the offeror's proposal met all of the specifications and requirements described in the RFP? The offeror will provide a point-by-point response to each task and deliverable in Section II-C, stating how the offeror's proposal meets or exceeds the requirement.
 - 3. Has the offeror provided references for existing successful clients, including points of contact for each reference? Are those projects similar?
 - 4. How many consultants, analysts and programmers are going to be assigned to the project? Has the offeror provided references for the proposed consultants? Were the projects similar?
 - 5. Did the clients consider the reference projects successful? How recent are these projects?
 - 6. Has the offeror's proposal demonstrated an appreciation and understanding of the work involved in this project?

V. DRAFT STATE OF HAWAII AGREEMENT FOR GOODS OR SERVICES BASED UPON COMPETITIVE SEALED PROPOSALS

(Following pages)

STATE OF HAWAII AGREEMENT FOR GOODS OR SERVICES BASED UPON COMPETITIVE SEALED PROPOSALS

This Agree	ment, exec	uted on the	e respective	dates o	of the signatures of the parties
			•		between the
(hereinafter "DIRECTOR	"), and				
					e propriessrahip," or other legal form of the Contractor)
					whose business address and
taxpayer identification nu	mber are as	follows:			
		REC	TALS		
A. The	STATE is	in need of	the goods	or servi	ces, or both, described in this
Agreement and its attachr	nents.				
B. The	STATE has	s issued a	request for	competi	tive sealed proposals, and has
received and reviewed pro	oposals sub	mitted in	response to	the req	uest.
C. The	solicitation	for prop	osals and	the sele	ction of the CONTRACTOR
were made in accordance	with section	on 103D-3	303, Hawa	ii Revis	ed Statutes ("HRS"), Hawaii
Administrative Rules, Tit	le 3, Depa	rtment of	Accountin	g and (General Services, Subtitle 11
(hereinafter "Procurement	t Rules"),	sections	3-122-41	throug	h 3-122-60, and applicable
procedures established by	the approp	riate Chie	f Procuren	ent Off	icer ("CPO").
D. The	CONTRAC	CTOR has	been identi	fied as t	he responsible and responsive
offeror whose proposal is	the most ad	vantageou	s for the ST	ΓΑΤΈ, t	aking into consideration price
and the evaluation factors	set forth in	the reque	est.		
E. The	STATE de	sires to re	tain and en	gage th	e CONTRACTOR to provide
the goods or services, or	both, as th	e case ma	ay be, and	the CC	NTRACTOR is agreeable to
providing said goods or so					-
F. Mor	ey is availa	able to fur	nd this Agr	eement	pursuant to:
(1)	· · · · · · · · · · · · · · · · · · ·		_ or (2) _		

or both, in the following amounts:		State \$
		Federal \$
G.	Pursuant to	, the STATE is
		(legal autority to outer into agreement)
authorized to enter is	nto this Agreement.	
		. Col annuises contained in this Agreement the
		tion of the promises contained in this Agreement, the
STATE and the CO	NTRACTOR agree as	
1.		ces. The CONTRACTOR shall, in a proper and
		TATE, provide all the goods or services, or both, set
		proposals number ("Request"), and the
CONTRACTOR's ac	ccepted proposal ("Prop	posal"), both of which, even if not physically attached
to this Agreement, a	re hereby made a part	
2.	Compensation. The	CONTRACTOR shall be compensated for goods
supplied or services	performed, or both, u	nder this Agreement in a total amount not to exceed
		LLARS (\$), including taxes, at the time
'		and CONTRACTOR's proposal.
3.		TTRACTOR (is) (is not) required to provide a
(performance) (payn	nent) (performance and	d payment) bond in the amount of
	_ DOLLARS (\$	
4.		t Declaration. The Standards of Conduct Declaration
of the CONTRACTO		made a part of this Agreement.
5.		onditions. The General Conditions and any Special
Conditions are attac		a part of this Agreement. In the event of a conflict
		ecial Conditions, the Special Conditions shall control.
		nents, the order of precedence shall be as follows: (1)
		addenda; (2) Request, including all attachments and
addenda; and (3) Pro		
6.		Liquidated damages shall be assessed in the amount
		ARS (\$) per day, in accordance with the
	9 of the General Cond	
7.	•	en notice required to be given by any party to this
-		y, or (b) sent by United States first class mail, postage
prepaid. Notice rec	quired to be given to	the Director shall be sent to the Director's office in

Total House i Notice to the agency	procurement officer shall be sent to:
Onothin, mawaii. 140the to the agency	. Notice to the CONTRACTOR at the
(3) days after mailin	in this Agreement. A notice shall be deemed to have g or at the time of actual receipt, whichever is earlier. I notifying the STATE in writing of any change of
IN VIEW OF THE AE ignatures, on the dates below, to be eff	SOVE, the parties execute this Agreement by their fective as of the date first above written.
	STATE
	Ву
	Print Name
	Title
	Date
	CONTRACTOR
	Ву
	Print Name
	Title
	Date
APPROVED AS TO FORM:	
Deputy Attorney General	

^{*}Evidence of authority of the CONTRACTOR's representative to sign this Agreement for the CONTRACTOR must be attached.

CONTRACTOR'S STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of	, CONTRACTOR, the undersigned does
declare as follows:	· ·

- 1. CONTRACTOR □ is □ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
- 2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
- 3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
- 4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an

^{*}Reminder to agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

DATED: Honolulu, Hawaii,	· · · · · · · · · · · · · · · · · · ·
	CONTRACTOR
	By(signature)
	Print Name
	Print Title
	Name of Contractor
	Date

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF)	
COUNTY OF	· · · · · · · · · · · · · · · · · · ·) ss.)	
			, 20, before me appeare
	described in a	nd, who	no, being by me duly sworn, did say the
he/she/they is/are		and	
			o sign said instrument on behalf of the executed said instrument as the free act an
		(Signat	mature)
		(Print 1	nt Name)
(Notary Seal)	Not	tary Publ	blic, State of
(110taly both)	My	commiss	ission expires:

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

By Heads of Departments or Agencies as Delegated by the Director of Human Resources Development (a.)

Pursuant to a delegation of the authority by the Director of Human Resources Development, I certify that the services provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to §76-16, Hawaii Revised Statutes (HRS).

(Signature)	
(Print Name)	
(Print Title)	
(Date)	

a. This page of this two-paged certificate may be used by all department heads and others to whom the Director of Human Resources Development has delegated authority to certify §76-16, HRS, civil service exemptions. The specific paragraph(s) of §76-16, HRS, upon which an exemption is based should be noted in the contract file.

NOTE: If authority to certify exemptions under §§76-16(2), 76-16(3), 76-16(12), and 76-16(15), HRS, has not been delegated, only the Director of DHRD may certify §§76-16(2), 76-16(3), 76-16(12), and 76-16(15) exemptions.

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

By the Director of Human Resources Development, State of Hawaii (b.)

	er this Contract, and the person(s) providing the civil service, pursuant to §76-16, Hawaii Revised
Statutes (HRS).	,
	(Signature)
•	(Print Name)
·	(Print Title, if designee of the Director of DHRD)
·	(Date)

b. This page of this two-paged certificate may be used only by the Director of Human Resources Development (DHRD) or the Director's designee.

NOTE: If authority to certify exemptions under §§76-16(2), 76-16(3), 76-16(12), and 76-16(15), HRS, has not been delegated, only the Director of DHRD may certify §§76-16(2), 76-16(3), 76-16(12), and 76-16(15) exemptions.

VI. ATTACHMENT A

INTENT TO SUBMIT PROPOSAL FORM (Following page)

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INTENT TO SUBMIT PROPOSAL FORM

	Date:
Gentlemen:	
'REQUEST FOR PROPOSAL T	e examined the State's RFP NO. ATG-CPJA-05-IS-01, O PROVIDE A REQUIREMENTS DEFINITION FOR TICE INFORMATION SYSTEM" and we intend to submit
	Sincerely,
	Signature:
	Name:
	Title:
	Company
	Mailing Address:
	(area code) Telephone number:
	(area code) Facsimile number:
	Email address:

VI. ATTACHMENT B

PROPOSAL PACKET (Following pages)

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1. PROPOSAL TRANSMITTAL LETTER

The undersigned has examined and understands RFP NO. ATG-CPJA-05-IS-01, "REQUEST

Honorable Mark J. Bennett, Attorney General Department of the Attorney General State of Hawaii 235 Beretania Street., Suite 401 Honolulu, Hawaii 96813

General Bennett:

HAWAII JUVENILE JUSTICE INFORMATION SYSTEM" and hereby ago to furnish and deliver all in strict compliance with the Request for Proposal.	
The TOTAL PROPOSAL PRICE IS	DOLLARS
Any questions that the State may have regarding this proposal should be directed	to:
Name	
Title:	
Company	
Address	
City, State, Zip	
Telephone	

The undersigned understands and agrees that:

- 1. The Department of the Attorney General reserves the right to reject any and all proposals and to waive any defects, when in the State's opinion, such rejection or waiver must be made in the best interest of the State;
- 2. By submitting this proposal, the undersigned is declaring that the proposal is not in violation of Section 84-15, Hawaii Revised Statutes, concerning prohibited State contracts; and
- 3. If awarded the Contract, any services performed must be performed in accordance with Section 103-55, Hawaii Revised Statutes.

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Respectfully submitted,	
By	_
Title	*(Affix Corporate Seal)
General Excise Tax License Number	-

*If the corporate seal is not available at the local or branch office from where the proposal is being made, a corporate certificate, resolution, or letter delegating proper authority may be attached to the proposal as an acceptable substitute.

2. Executive Summary

The Executive Summary shall condense and highlight the contents of the Proposal in such a way as to provide a broad but clear understanding of the entire proposal. The offeror's plan must demonstrate an understanding of, and the ability to meet and perform, all contractual requirements listed in this RFP.

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3. Approach to the Project

A point by point response to each Task and Deliverable noted in Section C of Scope & Services

- 1. Review of Existing Documentation
- 2. Detail Work Plan
- 3. Bi-weekly Status Reports
- 4. Hawaii JJIS Community Reviews
- 5. Interviews with non-participating JJIS agencies
- 6. Meeting with the JJIC "new technology" subcommittee
- 7. Initial Draft of user needs assessment
- 8. Draft review with JJIC "new technology" subcommittee
- 9. Final User needs assessment & recommendations
- 10. Cost Analysis & alternatives

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4. Work Plan and Schedule

RFP: ATG-CPJA-05-IS-01 August 9, 2004 Attachments 47 of 74 5. Project Organization and Staffing

6. Corporate Background and Experience

VI. ATTACHMENT C

OFFER FORM (OF-1) (Following page)

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REQUEST FOR PROPOSAL TO PROVIDE A REQUIREMENTS DEFINITION FOR THE HAWAII JUVENILE JUSTICE INFORMATION SYSTEM RFP NO. ATG-CP.IA-05-IS-01

Ms. Eileen Madigan
JJIS Coordinator
Hawaii State Department of Attorney General
Crime Prevention & Justice Assistance Division
Juvenile Justice Information System
235 Beretania Street., Suite 401
Honolulu, Hawaii 96813

Ms. Madigan:

The undersigned has carefully read and understands the terms and conditions specified in the RFP, and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

The undersigned represents: (Check √ one only) ☐ A **Hawaii business** incorporated or organized under the laws of the State of Hawaii; **OR** ☐ A **Compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii, but registered at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii As a separate branch or division that is capable of fully performing under the contract. State of incorporation: Offeror is: □ Sole Proprietor □ Partnership □ Corporation □ Joint Venture Other ____ Social Security or Federal I.D. No.: __ Hawaii General Excise Tax License I.D. No.: Payment address (other than street address below): _____ City, State, Zip Code: _____ Business address (Hawaii street address): City, State, Zip Code: Respectfully submitted: Authorized (Original) Signature

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Telephone No.:	Name and Title (Please Type or Print)
Fax No.:(Offeror)	Exact Legal Name of Company
(Offeror)	E-mail Address:
	*If Offeror is a "dba" of a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed:
OFFER FORM	OF-1

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VI. ATTACHMENT D

CONFIDENTIALITY AGREEMENT



CONFIDENTIALITY AGREEMENT

I certify that my use of data from the Juvenile Justice Information System (JJIS) shall be limited to the software development/information technology purposes for which I have been hired. I have read and understand the confidentiality provisions of Chapter 846D, Hawaii Revised Statutes. I will not transmit any confidential JJIS data over a public network and, upon completion of the contracted work, I will remove or destroy all confidential JJIS data from all computer storage media in my possession. I further agree that I am responsible for making any other members of my development team aware of this agreement and that there are criminal and civil penalties for divulging confidential JJIS information.

Name	Company
Signature	
	
Title	

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VI. ATTACHMENT E

TAX CLEARANCE & CERTIFICATES

Responsibility of Winning Vendor. Reference §3-122-112, HAR, Responsibility of Offerors. If compliance documents have not been submitted to the Attorney General's contact person of this procurement prior to award, the vendor which has been chosen by the Evaluation committee as the winning vendor shall produce documents to the procurement officer to demonstrate compliance with this section.

HRS Chapter 237 tax clearance requirement for award. Instructions are as follows:

Pursuant to §103D-328, HRS, vendor shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate. It must be valid on the date it is received by the Attorney General's contact person of this procurement.

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX TAX CLEARANCE APPLICATION Form A-6 (Rev. 2003) which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms & Information): http://www.state.hi.us/tax/alphalist.html#a

DOTAX Forms by Fax/Mail: (808) 587-7572 1-800-222-7572

Completed tax clearance applications may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:

DOTAX: (808) 587-1488 IRS: (808) 539-1573

The application for the clearance is the responsibility of the vendor, and must be submitted directly to the DOTAX or IRS and not to the Attorney General. However, the tax clearance certificate shall be submitted to the Attorney General's contact person of this procurement.

HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award. Instructions are as follows:

Pursuant to §103D-310(c), HRS, the vendor shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the Attorney General's contact person of this procurement. A photocopy of the certificate is acceptable.

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The certificate of compliance shall be obtained on the State of Hawaii, *DLIR APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR, Form LIR#27* which is available at www.dlir.state.hi.us (at the menu click on **Employer Forms, LIR#27**), or at the neighbor island DLIR District Offices. The DLIR will return the form to the Offeror who in turn shall submit it to the Attorney General's contact person of this procurement.

The <u>application</u> for the certificate is the responsibility of the vendor, and must be submitted directly to the DLIR and not to the Attorney General's contact person of this procurement. However, the certificate shall be submitted to this procurement's contact person.

<u>Compliance with Section 103D-310(c)(1) and (2), HRS.</u> Pursuant to section 3-122-112, HAR, the vendor shall be required to submit a *CERTIFICATE OF GOOD STANDING* (Certificate) issued by the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division (BREG). The Certificate is valid for six months from date of issue and must be valid on the date it is received by the Attorney General's contact person of this procurement. A photocopy of the certificate is acceptable.

To obtain the Certificate, the vendor must first be registered with the BREG. <u>A sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate.</u>

On-line business registration and the Certificate are available at www.BusinessRegistrations.com. To register or to obtain the Certificate by phone, call (808) 586-2727 (M-F 7:45 to 4:30 HST). Offerors are advised that there are costs associated with registering and obtaining the Certificate.

<u>Timely Submission of all Certificates.</u> The above certificates should be applied for and submitted to the Attorney General's contact person of this procurement as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

<u>Final Payment Requirements.</u> Vendor is required to submit a tax clearance certificate for final payment on the contract. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

In addition to the tax clearance certificate, an original "Certification of Compliance for Final Payment" (SPO Form-22), attached, will be required for final payment. A copy of the Form is also available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors" from the Hawaii. Public Procurement Code, Chapter 103D, HRS, menu.

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VI. ATTACHMENT F

GENERAL CONDITIONS

(Following pages)

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GENERAL CONDITIONS

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GENERAL CONDITIONS

- 1. Coordination of Services by the STATE. The "head of the purchasing agency," (which term includes the designee of the head of the purchasing agency), shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with the head of the purchasing agency at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of services.
- 2. <u>Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.</u>
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE's opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall

comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 237-45, HRS, and paragraph 17 of these General Conditions.

f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

3. <u>Personnel Requirements.</u>

- a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.
- 4. <u>Nondiscrimination.</u> No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
- 5. <u>Conflicts of Interest.</u> The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Contract.
- 6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE and (ii) the CONTRACTOR's assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR's assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.
 - a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment Contract in which the

STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR's obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR's articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR's name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.
- c. <u>Reports.</u> All assignment Contracts and amendments to this Contract effecting changes of the CONTRACTOR's name or novations hereunder shall be reported to the CPO within thirty days of the date that the assignment Contract or amendment becomes effective.
- d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds Contracts with more than one purchasing agency of the State, the assignment Contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
- 7. <u>Indemnification and Defense.</u> The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
- 8. <u>Cost of Litigation.</u> In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
- 9. <u>Liquidated Damages.</u> When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR

is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR's delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR shall remain liable for damages caused other than by delay.

- 10. State's Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other Contracts or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
- 11. <u>Disputes.</u> Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 126, Procurement Rules, as the same may be amended from time to time.
- 12. <u>Suspension of Contract.</u> The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer, may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop work orders shall not exceed sixty consecutive days and shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:
 - (1) Cancel the stop performance order; or

- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. <u>Cancellation or expiration of the order.</u> If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or Contract price, or both, and the Contract shall be modified in writing accordingly, if:
 - (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. <u>Termination of stopped performance</u>. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR's right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. <u>CONTRACTOR's duties.</u> Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR's rights under chapter 126, Procurement Rules. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- đ. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. <u>Erroneous termination for default.</u> If, after notice of termination of the CONTRACTOR's right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to such provision.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. <u>Termination for Convenience.</u>

- a. <u>Termination.</u> The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. <u>CONTRACTOR's obligations</u>. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR's right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:
 - (1) Any completed goods or work product; and
 - (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. <u>Compensation</u>.

(1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by subchapter 15, chapter 3-122, Procurement Rules, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.

- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete Contract under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the Contract price of performance not terminated.
- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

- 15. Claims Based on the Agency Procurement Officer's Actions or Omissions.
 - a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
 - (1) <u>Written notice required.</u> The CONTRACTOR shall give written notice to the Agency procurement officer:
 - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
 - (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
 - (C) Within such further time as may be allowed by the Agency procurement officer in writing.
 - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
 - (3) <u>Basis must be explained.</u> The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
 - (4) <u>Claim must be justified.</u> The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
 - b. <u>CONTRACTOR not excused.</u> Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

- c. <u>Price adjustment.</u> Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.
- 16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles) of the Procurement Rules and the following guidelines:
 - a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
 - b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
 - c. Unless prior written approval of the DIRECTOR is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for interisland or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. <u>Original invoices required.</u> All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. <u>Subject to available funds.</u> Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be dispersed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. <u>Final payment</u>. Final payment under this Contract shall be subject to sections 103-53 and 237-45, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.

18. <u>Federal Funds.</u> If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds.

19. Modifications of Contract.

- a. <u>In writing.</u> Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. <u>No oral modification.</u> No oral modification, alteration, amendment, change, or extension of any term, provision or condition of this Contract shall be permitted.
- c. <u>Agency procurement officer</u>. By a written order, at any time, and without notice to any surety, the Agency procurement officer, subject to mutual consent of the parties to this Contract and all appropriate adjustments, may make modifications within the general scope of this Contract to include any one or more of the following:
 - (A) Drawings, designs, or specifications;
 - (B) Method or place of delivery;
 - (C) Description of services to be performed:
 - (D) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (E) Place of performance of the services; or
 - (F) Other provisions of the Contract accomplished by mutual action of the parties to the Contract.
- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR's cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in Contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
- e. <u>Claim barred after final payment.</u> No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written Contract of modification is not made prior to final payment under this Contract.
- f. <u>Claims not barred.</u> In the absence of an Contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR's right to pursue a claim under this Contract or for a breach of contract.

- g. <u>CPO approval.</u> If this is a professional services Contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial Contract price, whichever increase is higher, must receive the prior approval of the CPO.
- h. <u>Tax clearance</u>. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE's approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.
- i. <u>Sole source Contracts.</u> Amendments to sole source Contracts that would change the original scope of the contract may only be made with the approval of the CPO. Annual renewal of a sole source Contract for services should not be submitted as an amendment.
- 20. <u>Change Order.</u> The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
 - (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
 - a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR's cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.
 - b. <u>Time period for claim.</u> Within thirty (30) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the CONTRACTOR's claim unless the STATE is prejudiced by the delay in notification.

- c. <u>Claim barred after final payment.</u> No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR's right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. <u>Price adjustment.</u> Any adjustment in the Contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By Contract on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of Contract between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126 of the Procurement Rules.
- b. <u>Submission of cost or pricing data.</u> The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of subchapter 15, chapter 3-122 of the Procurement Rules.
- 22. Variation in Quantity for Definite Quantity Contracts. Upon the Contract of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the CPO makes a written determination that such an increase will either be more economical than awarding another Contract or that it would not be practical to award another Contract.
- 23. <u>Changes in Cost-Reimbursement Contract.</u> If this Contract is a cost-reimbursement Contract, the following provisions shall apply:
 - a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);

- (2) Time of performance (i.e., hours of the day, days of the week, etc.);
- (3) Place of performance of services;
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
- (5) Method of shipment or packing of supplies; or
- (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
- c. The CONTRACTOR must assert the CONTRACTOR's rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
- d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
- e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new Contract estimated cost and, if this Contract is incrementally funded, the new amount allotted to the Contract.

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
- 25. <u>Publicity.</u> The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any State employee, including the head of the purchasing agency, the CPO, the DIRECTOR, the Agency procurement officer, or to the services or goods, or

both, provided under this Contract, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

- 26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
- 27. <u>Liens and Warranties.</u> Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.
- 28. <u>Audit of Books and Records of the CONTRACTOR</u>. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor or prospective subcontractor which are related to:
 - a. The cost or pricing data, and
 - b. A State contract, including subcontracts, other than a firm fixed-price contract.
- 29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency purchasing officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for Contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

- 30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
- 31. Records Retention. The CONTRACTOR and any subcontractors shall maintain the books and records that relate to the Contract and any cost or pricing data for three (3) years from the date of final payment under the Contract.
- 32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is

- established under this Contract and which are not passed on to the STATE under an escalation clause.
- 33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.
- 34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
- 35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Contract.
- 36. <u>Conflict between General Conditions and Procurement Rules</u>. In the event of a conflict between the General Conditions and the Procurement Rules, the Procurement Rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
- 37. Entire Contract. This Contract sets forth all of the Contracts, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior Contracts, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no Contracts, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
- 38. <u>Severability.</u> In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
- 39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE's right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the Procurement Rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE's rights or the CONTRACTOR's obligations under the Procurement Rules or statutes.